

STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
SENATE JUDICIARY STANDING COMMITTEE

March 14, 1977

JOINT PUBLIC HEARING

From tape b32r09-05-JJUD-770314

MEMBERS

Senate

Senator George Hohman, Chair
Senator Robert Ziegler, Sr., Vice Chair
Senator Patrick Rodey
Senator Mike Colletta
Senator Clem Tillion

House

Representative Terry Gardiner, Chair
Representative Bill Miles, Vice Chair
Representative Fred Brown
Representative Lisa Rudd
Representative Larry Carpenter
Representative Ed Dankworth
Representative Richard Eliason

COMMITTEE CALENDAR

Criminal Code Revision Review

WITNESS REGISTER

RALPH MOODY, Judge
Alaska Superior Court
Anchorage, Alaska

POSITION STATEMENT: Testified against the draft criminal code revision.

LAUREL PETERSON, Judge
Anchorage District Court
Anchorage, Alaska

POSITION STATEMENT: Testified on the draft criminal code revision.

^Criminal Code Revision Review

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CHAIR GARDINER called the joint meeting of the House Judiciary Standing Committee and the Senate Judiciary Standing Committee to order and announced that the committee will discuss perjury and bribery in the draft revised criminal code. He noted that he has been receiving "a bunch of mail ... from a bunch of ladies all over the state about sexual offences." Most of them are concerned about the spousal immunity provision, he stated.

CHAIR GARDINER said there is also a document denoted as "Transcript of Oregon Criminal Code Discussion," which is based on questions the Subcommittee submitted to criminal law judges in Oregon. He said the document includes questions asking how Oregon's revised criminal worked and what problems have surfaced. Additionally, he received a letter from Judge Ralph Moody and Judge Laurel Peterson [regarding the criminal code revision] and so he asked them to come to this meeting.

CHAIR GARDINER, Representative Dankworth, and Representative Brown expressed concern at how few committee members were present.

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[Inconsequential conversation]

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RALPH MOODY, Judge, Alaska Superior Court, Anchorage, Alaska, said he had submitted a letter and asked if there were any questions.

REPRESENTATIVE BROWN asked Judge Moody about his third comment in his letter: "What we have before us is a maze of different types and degrees of crime that would create a colossal bureaucracy in the criminal justice system." Representative Brown said he does not understand how that can occur by changing the definitions of the elements of the crime. He cannot see how that would result in any type of increase in the administration of the criminal justice system. Additionally, he said, it is his understanding that the types and degrees of crime set forth in the proposed revision are very much like those in the revisions in Illinois, New York, and other jurisdictions where they have been quite successful.

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JUDGE MOODY's response was indecipherable for the most part, but he concluded:

... four or five different crimes, then you ... have the police, you have to make a choice when you arrest someone as to which one of those four or five ... and he makes a wrong choice; the D.A. is going to have to change that and charge him something else. Then the judge and the Grand Jury have to determine whether they have the right one, then the judge has to hear arguments from all the attorneys as to whether or not that's the right crime with which he has been charged. ... It goes to the jury, and the judge has to give them ... the jury has to make a decision of which one of those definitions they fall into. Then the appeal process. You start arguing before the Supreme Court and you have to ... and the chance of you getting a ... is much less ... you've got new crimes and you've got new definitions. That's what I'm talking about. It will take more judges to do it and more Supreme Court justices, more police determining what type of crime that they're going to....

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REPRESENTATIVE BROWN said that kind of an argument could be made any time in history when any criminal code revision is proposed. Someone could say there needs to be more judges or more police because the assault statute has been completely rewritten. Much of the law relating to illicit drugs has also been rewritten, and "I don't think that's an argument for or against a criminal code," he opined. He said it has not been shown that there will be a colossal bureaucracy resulting from redefining the elements of crimes. Perhaps lawyers and judges will have to learn a new body of law, but this is something that comes with the territory, he expressed, as they have to keep track of recent decisions by the Supreme Court of Alaska and of the United States. Although Judge Moody commented that the model penal code has not been adopted in any state, the State of New York has a very comprehensive revision that passed in 1967. New York has ten years of experience with it, so Alaska has ten years of case law to go on, he added. He said he is not aware that a massive bureaucracy or confusion has come about in any of the states with modern revisions. Current law results in a great amount of confusion with its many levels of culpability indicated in the various crimes that have been created over the last 170 years.

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REPRESENTATIVE BROWN said that another comment Judge Moody made in his letter was, "We're having piecemeal legislation passing now with regard to the assault statute." He said that resulted, in part, because some members did not want to push a criminal code revision fast enough and there was a major omission in Alaska's current criminal law due to being so ancient. There was no statute addressing aggravated assault, he noted. Also, Alaska's criminal code happens to go back before "any of the decent scholarship done in the 19th or 20th century with regard to the original criminal laws." He said there is absolutely nothing regarding inchoate crimes--any decent definitions of solicitation, conspiracy, or attempt, which are important in the enforcement of modern criminal jurisprudence. He noted that Judge Moody also comments that pending sentencing legislation is piecemeal that, by itself, should not be addressed or should be addressed in a different way. "But, in fact, I believe that the [Sub]commission has steered clear of the sentencing area, knowing that the legislature and the administration and the Judicial Council is working on a bill on sentencing." He said he has many more questions.

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JUDGE MOODY said if he had asked a question, he would answer it, but he has yet to hear a question.

LAUREL PETERSON, Judge, Anchorage District Court, Anchorage, Alaska, said, "The reason we wrote this [letter] was the tenor of the [Sub]commission and the work product that it's producing--not as to the substance of the work product but how it's going about revising the criminal code." He said that Judge Moody and himself have been very active from the beginning of their involvement in saying Alaska should revise its existing code, plug the loopholes and the problem areas, and then possibly, after cleaning up the current statutes, go on to such a work product that has now been presented to this committee and ultimately will be presented to the entire legislature. He continued:

"The work product that we have here takes the form of the two drafts we currently have. It's a good work product. There's no question about that. Everybody can find problem areas that you would argue with and take issue with, but we're not saying--and we don't mean to

give the impression—that the hard labors and the long hours that have been put into it has been for naught. It is a good work product; however, the problem is that we are currently suffering under bad law that was bad law two years ago when the [Sub]commission first began, and these areas haven't been corrected. We haven't addressed ourselves to the immediate problems that we should have addressed ourselves to. We have constantly and consistently stated that to the Subcommittee, and the reason we wrote that letter was to express our views that we thought ... should be heard. The legislators and yourselves and members of this commission should know that there is some concern by the membership on the [Sub]commission. I don't want to take issue with why all of the other states revived their codes. I'm sure they had good reason for it. We may very well have a good reason for revising our code, if nothing else, because everyone else has done it. But, first of all, we should address the problems that we have today. There's going to be certain problems with a complete total revision. Our code hasn't shown to be that bad right now. The current law that we have today is not that bad at all. As a matter of fact, it's simple, it's easy to administrate, the criminals are not getting off, they're not walking the streets, the juries aren't confused, the judges aren't losing time by implementing the current statutory structure, and when you implement a complete total revision in the format that's being proposed you should be aware of the fact that there's going to be problems. And I think we'd be remiss if we didn't bring out our concerns.

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REPRESENTATIVE BROWN said that his question may be based on a misinterpretation of the letter. What he got from the three-page letter was a direct lambast of the entire idea of the revision and the work product. "You're saying, now, your viewpoint is something different than that," he offered. The letter looks, to him, like overwhelming opposition to anything involved in the criminal code revision.

JUDGE MOODY made an indiscernible comment. He then said, "If somebody could show me where you've got problems in the present law, and I've been in Alaska for 31 years. I was [indisc.] in territorial days; I've been Attorney General, and I've been on

the bench for 16 years now, and I haven't seen any problems [indisc.].

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REPRESENTATIVE MILES said he disagrees with Judge Peterson when he said the juries are not confused, the laws are working, and the criminals are not out walking the street. He noted that he is a layman and does not understand the system, but there are problems and he does not know how to solve them. He said he served on a jury and he was confused, and he sees that there are terrible problems. "If we don't go through some sort of major revision, I don't know what else to do. The piecemeal approach to any problem doesn't usually turn out to be a satisfactory solution."

JUDGE PETERSON said one must identify the problems that the jury is having. Juries have problems with confusion [indisc.] on a daily basis because of the administration of the jury system, but he would like examples of substantive law that gave the problem to the jury. "You better hold on to your hat" with the jury instructions that will result from the new code because of the multitude of lesser included offenses, he stated. That is not necessarily bad, he added, but they will be there and he hopes the instructions will be phrased in a way to be easily followed. He said he imagined that Representative Miles' problems serving on a jury were not based on substantive law but on other issues.

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REPRESENTATIVE MILES said he does not want to focus on jury instructions; the conversation has gone from a philosophical question to a narrow issue. He said he sees major problems and does not know what the solution is.

JUDGE MOODY said, "We're doing the wrong thing" if the goal is to get more people convicted or to change the crime rate in Alaska. Passing laws does not get people convicted, he stated, but catching people [indisc.]. The new code will probably keep more people from being convicted because they are going to get their convictions reversed because of some error.

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JUDGE PETERSON added that whatever confusion juries have is not based on substantive law. "The only people that are going to

read the substantive law, in all honesty, and can, will be the legislators who are directly involved with the passage of the act, the attorneys who are going to defend the individual charged, and the prosecution who is interested in prosecution of the criminal offense, and the judges who have to [indisc.].

REPRESENTATIVE MILES agreed that if the goal is to put more people in jail, more laws will not do that. He noted that Judge Moody suggests more detection and crime prevention, and the police are telling the legislature that "you've got to get those guys on the bench to toughen up."

JUDGE MOODY said people criticize judges "for the situation we have today." The judiciary is no more responsible for today's crime wave than the legislature, and "anything we do by passing law is not going to solve it." The crime wave in Alaska and in America will be solved when people take a different outlook on life; when people start respecting each other's position more and when we quit giving excuses and accepting excuses for what people do. [Further comments are indiscernible.]

REPRESENTATIVE DANKWORTH said his observation is that it is not the lack of clarity in the law that caused Representative Miles' confusion, it's some of those criminal procedures as to what can be admitted as evidence and what cannot. "I never did see that much actual confusion of the statute itself," he added. He said he is familiar with "a lot of the things you're talking about." The Rules of Criminal Procedure seem to eliminate the admission of things, and it is difficult to make a decision.

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JUDGE MOODY made mostly indiscernible comments, but he said he has misgivings about some of the rules, but he has to live by the rules. He noted that people who watch the legislative process are just as confused as a member of a jury.

REPRESENTATIVE RUDD asked if the new code will make it easier or harder for a judge to settle on a proper sentence [indisc.], aside from any new sentencing laws.

JUDGE PETERSON said the facts would always be the same, whether or not the law categorizes [indisc.].

JUDGE MOODY added indiscernible comments.

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REPRESENTATIVE RUDD surmised that the judges did not see anything in the intrinsic structure of the new code that makes it easier or harder to sentence.

JUDGE PETERSON said it will make it a little more intellectually consistent because there are some inconsistencies in the sentences that can be imposed, which have been commented on, but those could have been cured in one month of work two years ago. "Still, two years later, this is our problem we have with the way things are going. Two years later that inconsistency still exists. It looks like it will be another year until anything happens," he stated. He said that the inconsistency is not necessarily bad and it has improved. It is just one of the examples used to justify a total revision.

REPRESENTATIVE RUDD spoke of specific suggestions for how to improve the code.

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JUDGE PETERSON suggested putting the revision aside, going back to the original code, and filling in the loopholes.

JUDGE MOODY added that no one has shown them any great problems. He questioned redefining something that existed for 100 years--and everybody knows what it is--just for the sake of change.

JUDGE PETERSON said he asked someone for an example and the person gave the example of an instruction that was in error. The judge who made that instruction wrote a letter saying it was a definite error by all parties.

REPRESENTATIVE BROWN pointed out that "these matters address the ease of the administration of justice--the ease with which a decision is made by a police officer, by a judge, and so forth." He expressed his belief that usually a judge drafting a jury instruction looks at the elements of the crime that are in the statute. If all of the elements of the crime are not in the statute, which has occurred, it makes the administration of justice more difficult for a judge who has not tried that particular crime before and who does not have a view of what the proper jury instructions should be.

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REPRESENTATIVE BROWN noted that the judges have said that no one has given a reason to revise the code, but the Subcommittee has pointed out that existing law uses at least 20 different mental states, some of which have been found to be identical in meaning. He listed the mental states, and said that the new code will be far less confusing.

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THE AUDIO TURNS TO STATIC

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ADJOURNMENT